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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91208003
Party	Plaintiff Red Bull GmbH
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Submission	Motion for Summary Judgment
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Signature	/Leah Z. Halpert/
Date	06/05/2015
Attachments	Michael Ball Matters-Consolidated Oppo 91208003-MSJ.pdf(138531 bytes) Michael Ball Matters-91208003-MSJ_LZH Decl.pdf(493864 bytes)

I hereby certify that Opposer's Motion for Summary Judgment is being filed with the TTAB via ESTTA on the date set forth below.

Leah Z. Halpert

)	Consolidated Matter:	91-208,003
RED BULL GMBH ,)	Opposition No. 91-208,003 (Parent)	
)	Opposition No. 91-214,448 (Child)	
Opposer/Counterclaim Registrant)		
)	Marks:	
v.)	+RED DETOX ELIXIR (#85/400,933)	
)	+RED DREAM ELIXIR (#85/400,941)	
MICHAEL F. BALL,)	+RED SUN REPAIR ELIXIR	
)	(#85/400,955)	
)	+RED RESCUE ELIXIR (#85/406,652)	
Applicant/Counterclaim Petitioner)	+RED POWER ELIXIR (#85/400,948)	
)		

Pursuant to the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) Rule 56 and 37 C.F.R. § 2.127(e), Opposer, Red Bull GmbH (“Opposer”), hereby moves for entry of summary judgment in Opposer’s favor, sustaining the above-captioned consolidated opposition, on the ground of likelihood of confusion. As discussed herein, Applicant, Michael F. Ball (“Applicant”) expressly admits that confusion is likely between Applicant’s Application Nos. 85/400,933, 85/400,941, 85/400,955, 85/406,652, and 85/400,948 (the “+RED Marks”) and Opposer’s RED Mark¹, RED BULL Marks², and Common Law RED and RED BULL Marks.³ Given Applicant’s admissions, there is no genuine issue of material fact, and summary judgment in Opposer’s favor is appropriate.

In accordance with 37 C.F.R. § 2.127(d), Opposer respectfully requests that the opposition be immediately suspended pending the disposition of the motion for summary

³ Opposer's Common Law RED and RED BULL Marks are defined as Opposer's various common law trademarks for the marks RED, RED BULL, and other marks for or incorporating the words RED and RED BULL.

judgment, and that the Board issue an order to that effect.

I. Undisputed Factual Background

On November 14, 2012, Opposer filed the instant opposition against Application Nos. 85/400,933, 85/400,941, 85/400,955, and 85/406,652 based on contentions of likelihood of confusion.⁴ Opposer subsequently filed a second opposition against Application No. 85/400,948 on January 13, 2014, which was consolidated with Parent Opposition No. 91-208,003 on February 20, 2014. After a variety of pleading motions, discovery opened on October 12, 2014.

During the pendency of the discovery period, Opposer served Requests for Production and Requests for Admission on Applicant. (Declaration of Leah Halpert (“Halpert Decl.”), ¶ 4.) Per Fed. R. Civ. P. 36(a)(3), Applicant’s responses to the Requests for Admission were due May 15, 2015, however, to date, Opposer has not received any responses, despite sending follow up emails and phone calls to Applicant’s counsel, inquiring when Opposer may receive such responses. (Halpert Decl. ¶ 5-6.) The only response Opposer has received to these inquiries was a brief email dated June 2, 2015, implying Applicant’s intention to not respond and expressly stating that Applicant will voluntarily abandon the opposed applications and withdraw the pending counterclaim without Opposer’s consent. (*Id.* ¶ 6, Exh. B.)

Having failed to respond to Opposer’s Requests for Admission within the statutory 30-day period, the requests are now deemed admitted by operation of law. Fed. R. Civ. P. 36(a)(3); *Fram Trak Industries v. Wiretracks LLC*, 77 USPQ2d 2000, 2005 (TTAB 2006); TBMP § 407.03(a). Additionally, given Applicant’s apparent lack of interest in continuing this matter

II. Argument

a. Summary Judgment Standard

Summary judgment is appropriate when “the pleadings . . . together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

⁴ On August 14, 2013, Applicant filed a counterclaim in connection with its answer to Opposer’s First Amended Notice of Opposition. This motion does not consider the counterclaim, but is focused solely on the opposition itself, and, specifically, Opposer’s sole ground of likelihood of confusion.

entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). “The purpose of the motion [for summary judgment] is judicial economy, that is to avoid an unnecessary trial where there is no genuine issue of material fact and more evidence than is already available in connection with the summary judgment motion could not reasonably be expected to change the result in the case.” TBMP § 528.01. Summary judgment is appropriate in actions before the Board, and where appropriate, the Board does not hesitate to dispose of cases on summary judgment. *Milliken & Co. v. Image Indus., Inc.*, 39 USPQ2d 1192, 1196 (TTAB 1996). Here, summary judgment is proper in light of Applicant’s specific admissions that likelihood of confusion exists between its +RED Marks and Opposer’s RED, RED BULL, and Common Law RED and RED BULL Marks. Based on these admissions, there is no genuine issue of material fact for the Board to decide, and no reasonable fact finder could decide in Applicant’s favor.

b. Applicant Conceded that Likelihood of Confusion Exists, and Admitted Every Relevant Element Leading to this Conclusion.

The seminal case, *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), sets forth thirteen factors to be weighed when making a likelihood of confusion determination. While all factors are important, the relevance and weight to be given to the various factors are determined on a case-by-case basis. *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1353 (Fed. Cir. 2004) (“Neither we nor the board, however, need consider every *du Pont* factor). Here, the three key considerations – the similarity of the parties’ respective marks, the similarity of the parties’ respective goods, and the similarity of the parties’ respective channels of trade – have all been admitted by Applicant as weighing in Opposer’s favor. Further, Applicant expressly admits that a likelihood of confusion exists between the parties’ respective marks, leaving no genuine issue of material fact.

Applicant admits the following in respect to each and every one of the +RED Marks⁵ (for full admissions *see* Halpert Decl. Exh. A, Request for Admission 41-147):

Similarities of the Respective Marks:

- 41: The +RED DETOX ELIXIR Mark consist of a shaded quadrilateral containing a plus symbol in an alternate color next to the word RED. The words DETOX ELIXIR are below [the] “+R” portion of “+RED, and in a smaller font size.
- 42: The dominant visual aspect of the +RED DETOX ELIXIR Mark is “+RED”.
- 51: The dominant visual aspect of the +RED DETOX ELIXIR Mark is identical or substantially similar to Opposer’s RED Mark.
- 56: The dominant visual aspect of the +RED DETOX ELIXIR Mark is identical or substantially similar to Opposer’ RED BULL Marks.
- 61: The dominant visual aspect of the +RED DETOX ELIXIR Mark Mark is identical or substantially similar to Opposer’s Common Law RED and RED BULL Marks.
- 88: Applicant’s +RED DETOX ELIXIR Mark creates the same overall commercial impression as Opposer’s RED Mark.
- 93: Applicant’s +RED DETOX ELIXIR Mark creates the same overall commercial impression as Opposer’s RED BULL Marks.
- 98: Applicant’s +RED DETOX ELIXIR Mark creates the same overall commercial impression as Opposer’s Common Law RED and RED BULL Marks.

Similarities of Respective Goods:

- 66: Soft drinks are defined as non-alcoholic beverages that are usually carbonated.
- 67: Opposer’s Red Bull Energy Drink beverage product, upon which Opposer uses its RED Mark, its RED BULL Marks, and its Common law RED and RED BULL Marks is a carbonated non-alcoholic beverage.
- 73: The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are identical or substantially similar to the goods covered by Opposer’s RED Mark.
- 78: The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are identical or substantially similar to the goods covered by Opposer’s RED BULL Marks.
- 83: The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are identical or substantially similar to the goods covered by Opposer’s Common Law RED and RED BULL Marks.

Similarities of Respective Trade Channels:

- 103: The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be advertised and promoted to the

⁵ As all of the relevant admissions for each factor and the ground of likelihood of confusion are repeated for each of the five opposed marks, for space reasons within the body of this Motion, Opposer has only listed Applicant’s admissions as they pertain to Application No. 85/400,933 (+RED DETOX ELIXIR). However, as seen in the full admissions (Halpert Decl. Exh. A, RFA 41-147), Applicant has admitted that all of its opposed marks are likely to be confused with Opposer’s pleaded marks, leaving no genuine issue of material fact for the Board to decide.

- same purchasers as Opposer's goods under Opposer's RED Mark.
- 108:** The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's RED BULL Marks.
- 113:** The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's Common Law RED and RED BULL Marks.
- 118:** The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods [under] Opposer's RED Mark.
- 123:** The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods [under] Opposer's RED BULL Marks.
- 128:** The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods [under] Opposer's Common Law RED and RED BULL Marks.

Likelihood of Confusion Exists:

- 133:** Simultaneous use of Applicant's +RED DETOX ELIXIR Mark and Opposer's RED Mark is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.
- 138:** Simultaneous use of Applicant's +RED DETOX ELIXIR Mark and Opposer's RED BULL Marks is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.
- 143:** Simultaneous use of Applicant's +RED DETOX ELIXIR Mark and Opposer's Common Law RED and RED BULL Marks is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

As seen above, Applicant admits that the relevant likelihood of confusion factors weigh in Opposer's favor. Specifically, Applicant admits that each and every one of the +RED Marks, the goods associated therewith, and the intended channels of trade are identical or substantially similar to Opposer's RED, RED BULL, and Common Law RED and RED BULL Marks. (Halpert Decl. Exh. A, Request for Admission 41-132). Further, Applicant outright admits that its +RED Marks are likely to cause confusion with Opposer's RED, RED BULL, and Common Law RED and RED BULL Marks. (*Id.*, Request for Admission 133-147). As both parties are in agreement as to the material facts of this opposition, no genuine issue remains for the Board to decide, and summary judgment is appropriate.

III. Conclusion

In light of the arguments above, and evidence attached hereto, Opposer respectfully requests that the Board grant summary judgment in its favor with respect to Opposition No. 91-208,003, as no genuine issue of material fact remains. If summary judgment is not granted, Opposer requests that the Board determine, to the extent possible, what material facts are not genuinely at issue.

Respectfully submitted,

RED BULL GMBH
By: /Leah Z. Halpert/
Leah Z. Halpert
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San Jose, CA 95124-5273
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Attorneys for Opposer

Dated: June 5, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S MOTION FOR SUMMARY JUDGMENT** is being served on June 5, 2015, by first class mail, postage prepaid on Applicant's Correspondent of Record at the Correspondent's address of record below, with a courtesy copy via email to ccook@anvil-law.com:

Casimir W. Cook
Anvil Law PLC
2723 South State Street, Suite 150
Ann Arbor, MI 48104

/Leah Z. Halpert/
Leah Z. Halpert

)	Consolidated Matter:	91-208,003
RED BULL GMBH ,)		Opposition No. 91-208,003 (Parent)
)		Opposition No. 91-214,448 (Child)
Opposer/Counterclaim Registrant)		
)	Marks:	
v.)		+RED DETOX ELIXIR (#85/400,933)
)		+RED DREAM ELIXIR (#85/400,941)
MICHAEL F. BALL,)		+RED SUN REPAIR ELIXIR
)		(#85/400,955)
)		+RED RESCUE ELIXIR (#85/406,652)
Applicant/Counterclaim Petitioner)		+RED POWER ELIXIR (#85/400,948)
)		

I, Leah Z. Halpert, hereby declare under penalty of perjury of the laws of the United States of America, that the following is true and correct:

- 1

5. Applicant's deadline to serve responses to Opposer's discovery requests was May 15, 2015, yet, to date, Opposer has not received any responses.
6. On May 21, 2015, Opposer's counsel sent emails to Applicant's counsel following up on the status of Applicant's discovery responses. Opposer's counsel followed up via telephone on May 22, 2015, and again on May 27, 2015 with a subsequent email. On June 2, 2015, Applicant's counsel replied expressly stating that the opposed applications will be voluntarily abandoned and the counterclaim to the instant opposition would be withdrawn that day or the next. To date, no abandonment of the applications or withdrawal of the counterclaim has been filed. A true and correct copy of the emails are attached hereto as Exhibit B.

Executed this 5th day of June, 2015 at San Jose, California.

/Leah Z. Halpert/
Leah Z. Halpert

Exhibit A

)	Consolidated Matter:	91-208,003
RED BULL GMBH ,)	Opposition No. 91-208,003 (Parent)	
)	Opposition No. 91-214,448 (Child)	
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v.)	+RED DETOX ELIXIR (#85/400,933)	
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MICHAEL F. BALL,)	+RED SUN REPAIR ELIXIR	
)	(#85/400,955)	
)	+RED RESCUE ELIXIR (#85/406,652)	
Applicant/Counterclaim Petitioner)	+RED POWER ELIXIR (#85/400,948)	
)		

Pursuant to Trademark Rule of Practice Rule 2.120 and Federal Rule of Civil Procedure Rule 36, Opposer, Red Bull GmbH (“Red Bull”, or “Opposer”), hereby requests that Applicant, Michael F. Ball (hereinafter referred to as “Applicant”) admit or deny the truth of the following matters, including the genuineness of any documents identified herein.

The following definitions are an integral part of each and every request, and are incorporated therein by reference:

2. Unless otherwise required by the context, the terms “You,” “Your,” or “Applicant” shall be understood to refer to Applicant, Michael F. Ball, his affiliates, related or controlled companies, predecessors in title and/or interest, including successors and assigns, and all persons employed by any and all of the foregoing entities or individuals, including but not

limited to attorneys, consultants, experts, investigators, agents, or other persons acting on behalf of or in concert with Applicant.

3. The terms “trademark,” “service mark,” and “mark” each include trademarks, service marks, trade names, corporate names and use of terms analogous to use as a trademark or service mark (and include use of a word or symbol alone or in combination with other words or symbols).

4. As used herein, Applicant’s “+RED DETOX ELIXIR Mark” shall mean and include the mark of Appln. No. 85/400,933, alone or in combination with any other words, symbols, graphics, or designs as a trademark, service mark, trade name, corporate name or otherwise.



+RED DETOX ELIXIR Mark

5. As used herein, Applicant’s “+RED DREAM ELIXIR Mark” shall mean and include the mark of Appln. No. 85/400,941, alone or in combination with any other words, symbols, graphics, or designs as a trademark, service mark, trade name, corporate name or otherwise.



+RED DREAM ELIXIR Mark

6. As used herein, Applicant’s “+RED SUN REPAIR ELIXIR Mark” shall mean and include the mark of Appln. No. 85/400,955, alone or in combination with any other words,

symbols, graphics, or designs as a trademark, service mark, trade name, corporate name or otherwise.



+RED SUN REPAIR ELIXIR Mark

7. As used herein, Applicant's "+RED RESCUE ELIXIR Mark" shall mean and include the mark of Appln. No. 85/406,652, alone or in combination with any other words, symbols, graphics, or designs as a trademark, service mark, trade name, corporate name or otherwise.



+RED RESCUE ELIXIR Mark

8. As used herein, Applicant's "+RED POWER ELIXIR Mark" shall mean and include the mark of Appln. No. 85/400,948, alone or in combination with any other words, symbols, graphics, or designs as a trademark, service mark, trade name, corporate name or otherwise.



+RED POWER ELIXIR Mark

9. As used herein, "Applicant's Marks" shall collectively mean, and include, the +RED DETOX ELIXIR Mark, +RED DREAM ELIXIR Mark, +RED SUN REPAIR ELIXIR Mark, +RED RESCUE ELIXIR Mark, and +RED POWER ELIXIR Mark alone, together, or in

combination with any other words, symbols, graphics or designs as a trademark, service mark, trade name, corporate name or otherwise.

10. As used herein, Opposer's "RED Mark" shall mean and include the mark of Registration No. 3,939,863.

11. As used herein, Opposer's "RED BULL Marks" shall mean and include the marks of Registration No. 2,494,093 and Registration No. 3,092,197

12. As used herein, Opposer's "Common Law RED and RED BULL Marks" shall mean and include Opposer's various common law trademarks for the marks RED, RED BULL, and other marks for or incorporating the words RED and RED BULL.

13. Each of the Requests to Admit is propounded as to the Applicant, Michael F. Ball.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1

Prior to Applicant's selection of the +RED DETOX ELIXIR Mark, Applicant had actual knowledge of Opposer.

REQUEST FOR ADMISSION NO. 2

Prior to Applicant's selection of the +RED DREAM ELIXIR Mark, Applicant had actual knowledge of Opposer.

REQUEST FOR ADMISSION NO. 3

Prior to Applicant's selection of the +RED SUN REPAIR ELIXIR Mark, Applicant had actual knowledge of Opposer.

REQUEST FOR ADMISSION NO. 4

Prior to Applicant's selection of the +RED RESCUE ELIXIR Mark, Applicant had actual knowledge of Opposer.

REQUEST FOR ADMISSION NO. 5

Prior to Applicant's selection of the +RED POWER ELIXIR Mark, Applicant had actual knowledge of Opposer.

REQUEST FOR ADMISSION NO. 6

Prior to Applicant's selection of the +RED DETOX ELIXIR Mark, Applicant had actual knowledge of Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 7

Prior to Applicant's selection of the +RED DREAM ELIXIR Mark, Applicant had actual knowledge of Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 8

Prior to Applicant's selection of the +RED SUN REPAIR ELIXIR Mark, Applicant had actual knowledge of Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 9

Prior to Applicant's selection of the +RED RESCUE ELIXIR Mark, Applicant had actual knowledge of Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 10

Prior to Applicant's selection of the +RED POWER ELIXIR Mark, Applicant had actual knowledge of Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 11

Prior to Applicant's selection of the +RED DETOX ELIXIR Mark, Applicant had actual knowledge of Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 12

Prior to Applicant's selection of the +RED DREAM ELIXIR Mark, Applicant had actual knowledge of Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 13

Prior to Applicant's selection of the +RED SUN REPAIR ELIXIR Mark, Applicant had actual knowledge of Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 14

Prior to Applicant's selection of the +RED RESCUE ELIXIR Mark, Applicant had actual knowledge of Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 15

Prior to Applicant's selection of the +RED POWER ELIXIR Mark, Applicant had actual knowledge of Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 16

Prior to Applicant's selection of the +RED DETOX ELIXIR Mark, Applicant had actual knowledge of Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 17

Prior to Applicant's selection of the +RED DREAM ELIXIR Mark, Applicant had actual knowledge of Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 18

Prior to Applicant's selection of the +RED SUN REPAIR ELIXIR Mark, Applicant had actual knowledge of Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 19

Prior to Applicant's selection of the +RED RESCUE ELIXIR Mark, Applicant had actual knowledge of Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 20

Prior to Applicant's selection of the +RED POWER ELIXIR Mark, Applicant had actual knowledge of Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 21

Prior to Applicant's selection of the +RED DETOX ELIXIR Mark, Applicant had actual knowledge of Opposer's RED Mark in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 22

Prior to Applicant's selection of the +RED DREAM ELIXIR Mark, Applicant had actual knowledge of Opposer's RED Mark in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 23

Prior to Applicant's selection of the +RED SUN REPAIR ELIXIR Mark, Applicant had actual knowledge of Opposer's RED Mark in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 24

Prior to Applicant's selection of the +RED RESCUE ELIXIR Mark, Applicant had actual knowledge of Opposer's RED Mark in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 25

Prior to Applicant's selection of the +RED POWER ELIXIR Mark, Applicant had actual knowledge of Opposer's RED Mark in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 26

Prior to Applicant's selection of the +RED DETOX ELIXIR Mark, Applicant had actual knowledge of Opposer's RED BULL Marks in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 27

Prior to Applicant's selection of the +RED DREAM ELIXIR Mark, Applicant had actual knowledge of Opposer's RED BULL Marks in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 28

Prior to Applicant's selection of the +RED SUN REPAIR ELIXIR Mark, Applicant had actual knowledge of Opposer's RED BULL Marks in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 29

Prior to Applicant's selection of the +RED RESCUE ELIXIR Mark, Applicant had actual knowledge of Opposer's RED BULL Marks in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 30

Prior to Applicant's selection of the +RED POWER ELIXIR Mark, Applicant had actual knowledge of Opposer's RED BULL Marks in connection with non-alcoholic beverages, namely, carbonated beverages..

REQUEST FOR ADMISSION NO. 31

Prior to Applicant's selection of the +RED DETOX ELIXIR Mark, Applicant had actual knowledge of Opposer's Common Law RED and RED BULL Marks in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 32

Prior to Applicant's selection of the +RED DREAM ELIXIR Mark, Applicant had actual knowledge of Opposer's Common Law RED and RED BULL Marks in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 33

Prior to Applicant's selection of the +RED SUN REPAIR ELIXIR Mark, Applicant had actual knowledge of Opposer's Common Law RED and RED BULL Marks in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 34

Prior to Applicant's selection of the +RED RESCUE ELIXIR Mark, Applicant had actual knowledge of Opposer's Common Law RED and RED BULL Marks in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 35

Prior to Applicant's selection of the +RED POWER ELIXIR Mark, Applicant had actual knowledge of Opposer's Common Law RED and RED BULL Marks in connection with non-alcoholic beverages, namely, carbonated beverages.

REQUEST FOR ADMISSION NO. 36

At the time of filing the +RED DETOX ELIXIR Mark, Applicant had not made any use in commerce of the +RED DETOX ELIXIR Mark on or in connection with "non-alcoholic beverages, namely, carbonated beverages", as set forth in Appln. No. 85/400,933.

REQUEST FOR ADMISSION NO. 37

At the time of filing the +RED DREAM ELIXIR Mark, Applicant had not made any use in commerce of the +RED DREAM ELIXIR Mark on or in connection with "non-alcoholic beverages, namely, carbonated beverages", as set forth in Appln. No. 85/400,941.

REQUEST FOR ADMISSION NO. 38

At the time of filing the +RED SUN REPAIR ELIXIR Mark, Applicant had not made any use in commerce of the +RED SUN REPAIR ELIXIR Mark on or in connection with "non-alcoholic beverages, namely, carbonated beverages", as set forth in Appln. No. 85/400,955.

REQUEST FOR ADMISSION NO. 39

At the time of filing the +RED RESCUE ELIXIR Mark, Applicant had not made any use in commerce of the +RED RESCUE ELIXIR Mark on or in connection with “non-alcoholic beverages, namely, carbonated beverages”, as set forth in Appln. No. 85/406,652.

REQUEST FOR ADMISSION NO. 40

At the time of filing the +RED POWER ELIXIR Mark, Applicant had not made any use in commerce of the +RED POWER ELIXIR Mark on or in connection with “non-alcoholic beverages, namely, carbonated beverages”, as set forth in Appln. No. 85/400,948.

REQUEST FOR ADMISSION NO. 41

The +RED DETOX ELIXIR Mark consists of a shaded quadrilateral containing a plus symbol in an alternate color next to the word RED. The words DETOX ELIXIR are below “+R” portion of “+RED”, and in a smaller font size.

REQUEST FOR ADMISSION NO. 42

The dominant visual aspect of the +RED DETOX ELIXIR Mark is “+RED”.

REQUEST FOR ADMISSION NO. 43

The +RED DREAM ELIXIR Mark consists of a shaded quadrilateral containing a plus symbol in an alternate color next to the word RED. The words DREAM ELIXIR are below “+R” portion of “+RED”, and in a smaller font size.

REQUEST FOR ADMISSION NO. 44

The dominant visual aspect of the +RED DREAM ELIXIR Mark is “+RED”.

REQUEST FOR ADMISSION NO. 45

The +RED SUN REPAIR ELIXIR Mark consists of a shaded quadrilateral containing a plus symbol in an alternate color next to the word RED. The words SUN REPAIR ELIXIR are below “+R” portion of “+RED”, and in a smaller font size.

REQUEST FOR ADMISSION NO. 46

The dominant visual aspect of the +RED SUN REPAIR ELIXIR Mark is “+RED”.

REQUEST FOR ADMISSION NO. 47

The +RED RESCUE ELIXIR Mark consists of a shaded quadrilateral containing a plus symbol in an alternate color next to the word RED. The words RESCUE ELIXIR are below “+R” portion of “+RED”, and in a smaller font size.

REQUEST FOR ADMISSION NO. 48

The dominant visual aspect of the +RED RESCUE ELIXIR Mark is “+RED”.

REQUEST FOR ADMISSION NO. 49

The +RED POWER ELIXIR Mark consists of a shaded quadrilateral containing a plus symbol in an alternate color next to the word RED. The words POWER ELIXIR are below “+R” portion of “+RED”, and in a smaller font size.

REQUEST FOR ADMISSION NO. 50

The dominant visual aspect of the +RED POWER ELIXIR Mark is “+RED”.

REQUEST FOR ADMISSION NO. 51

The dominant visual aspect of the +RED DETOX ELIXIR Mark is identical or substantially similar to Opposer’s RED Mark.

REQUEST FOR ADMISSION NO. 52

The dominant visual aspect of the +RED DREAM ELIXIR Mark is identical or substantially similar to Opposer’s RED Mark.

REQUEST FOR ADMISSION NO. 53

The dominant visual aspect of the +RED SUN REPAIR ELIXIR Mark is identical or substantially similar to Opposer’s RED Mark.

REQUEST FOR ADMISSION NO. 54

The dominant visual aspect of the +RED RESCUE ELIXIR Mark is identical or substantially similar to Opposer’s RED Mark.

REQUEST FOR ADMISSION NO. 55

The dominant visual aspect of the +RED POWER ELIXIR Mark is identical or substantially similar to Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 56

The dominant visual aspect of the +RED DETOX ELIXIR Mark is substantially contained within Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 57

The dominant visual aspect of the +RED DREAM ELIXIR Mark is substantially contained within Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 58

The dominant visual aspect of the +RED SUN REPAIR ELIXIR Mark is substantially contained within Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 59

The dominant visual aspect of the +RED RESCUE ELIXIR Mark is substantially contained within Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 60

The dominant visual aspect of the +RED POWER ELIXIR Mark is substantially contained within Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 61

The dominant visual aspect of the +RED DETOX ELIXIR Mark is substantially contained within Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 62

The dominant visual aspect of the +RED DREAM ELIXIR Mark is substantially contained within Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 63

The dominant visual aspect of the +RED SUN REPAIR ELIXIR Mark is substantially contained within Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 64

The dominant visual aspect of the +RED RESCUE ELIXIR Mark is substantially contained within Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 65

The dominant visual aspect of the +RED POWER ELIXIR Mark is substantially contained within Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 66

Soft drinks are defined as non-alcoholic beverages that are usually carbonated.

REQUEST FOR ADMISSION NO. 67

Opposer's Red Bull Energy Drink beverage product, upon which Opposer uses its RED Mark, its RED BULL Marks, and its Common Law RED and RED BULL Marks is a carbonated non-alcoholic beverage.

REQUEST FOR ADMISSION NO. 68

At the time of filing the +RED DETOX ELIXIR Mark, Applicant had actual knowledge that Opposer's Red Bull Energy Drink product is a carbonated non-alcoholic beverage.

REQUEST FOR ADMISSION NO. 69

At the time of filing the +RED DREAM ELIXIR Mark, Applicant had actual knowledge that Opposer's Red Bull Energy Drink product is a carbonated non-alcoholic beverage.

REQUEST FOR ADMISSION NO. 70

At the time of filing the +RED SUN REPAIR ELIXIR Mark, Applicant had actual knowledge that Opposer's Red Bull Energy Drink product is a carbonated non-alcoholic beverage.

REQUEST FOR ADMISSION NO. 71

At the time of filing the +RED RESCUE ELIXIR Mark, Applicant had actual knowledge that Opposer's Red Bull Energy Drink product is a carbonated non-alcoholic beverage.

REQUEST FOR ADMISSION NO. 72

At the time of filing the +RED POWER ELIXIR Mark, Applicant had actual knowledge that Opposer's Red Bull Energy Drink product is a carbonated non-alcoholic beverage.

REQUEST FOR ADMISSION NO. 73

The goods on which Applicant asserts a bona fide intent to use the +RED DETOX ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 74

The goods on which Applicant asserts a bona fide intent to use the +RED DREAM ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 75

The goods on which Applicant asserts a bona fide intent to use the +RED SUN REPAIR ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 76

The goods on which Applicant asserts a bona fide intent to use the +RED RESCUE ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 77

The goods on which Applicant asserts a bona fide intent to use the +RED POWER ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 78

The goods on which Applicant asserts a bona fide intent to use the +RED DETOX ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 79

The goods on which Applicant asserts a bona fide intent to use the +RED DREAM ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 80

The goods on which Applicant asserts a bona fide intent to use the +RED SUN REPAIR ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 81

The goods on which Applicant asserts a bona fide intent to use the +RED RESCUE ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 82

The goods on which Applicant asserts a bona fide intent to use the +RED POWER ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 83

The goods on which Applicant asserts a bona fide intent to use the +RED DETOX ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 84

The goods on which Applicant asserts a bona fide intent to use the +RED DREAM ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 85

The goods on which Applicant asserts a bona fide intent to use the +RED SUN REPAIR ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 86

The goods on which Applicant asserts a bona fide intent to use the +RED RESCUE ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 87

The goods on which Applicant asserts a bona fide intent to use the +RED POWER ELIXIR Mark are identical or substantially similar to the goods covered by Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 88

Applicant's +RED DETOX ELIXIR Mark creates the same overall commercial impression as Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 89

Applicant's +RED DREAM ELIXIR Mark creates the same overall commercial impression as Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 90

Applicant's +RED SUN REPAIR ELIXIR Mark creates the same overall commercial impression as Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 91

Applicant's +RED RESCUE ELIXIR Mark creates the same overall commercial impression as Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 92

Applicant's +RED POWER ELIXIR Mark creates the same overall commercial impression as Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 93

Applicant's +RED DETOX ELIXIR Mark creates the same overall commercial impression as Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 94

Applicant's +RED DREAM ELIXIR Mark creates the same overall commercial impression as Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 95

Applicant's +RED SUN REPAIR ELIXIR Mark creates the same overall commercial impression as Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 96

Applicant's +RED RESCUE ELIXIR Mark creates the same overall commercial impression as Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 97

Applicant's +RED POWER ELIXIR Mark creates the same overall commercial impression as Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 98

Applicant's +RED DETOX ELIXIR Mark creates the same overall commercial impression as Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 99

Applicant's +RED DREAM ELIXIR Mark creates the same overall commercial impression as Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 100

Applicant's +RED SUN REPAIR ELIXIR Mark creates the same overall commercial impression as Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 101

Applicant's +RED RESCUE ELIXIR Mark creates the same overall commercial impression as Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 102

Applicant's +RED POWER ELIXIR Mark creates the same overall commercial impression as Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 103

The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 104

The goods on which Applicant asserts a bona fide intent-to-use the +RED DREAM ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 105

The goods on which Applicant asserts a bona fide intent-to-use the +RED SUN REPAIR ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 106

The goods on which Applicant asserts a bona fide intent-to-use the +RED RESCUE ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 107

The goods on which Applicant asserts a bona fide intent-to-use the +RED POWER ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 108

The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 109

The goods on which Applicant asserts a bona fide intent-to-use the +RED DREAM ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 110

The goods on which Applicant asserts a bona fide intent-to-use the +RED SUN REPAIR ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 111

The goods on which Applicant asserts a bona fide intent-to-use the +RED RESCUE ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 112

The goods on which Applicant asserts a bona fide intent-to-use the +RED POWER ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 113

The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 114

The goods on which Applicant asserts a bona fide intent-to-use the +RED DREAM ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 115

The goods on which Applicant asserts a bona fide intent-to-use the +RED SUN REPAIR ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 116

The goods on which Applicant asserts a bona fide intent-to-use the +RED RESCUE ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 117

The goods on which Applicant asserts a bona fide intent-to-use the +RED POWER ELIXIR Mark are intended to be advertised and promoted to the same purchasers as Opposer's goods under Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 118

The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 119

The goods on which Applicant asserts a bona fide intent-to-use the +RED DREAM ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 120

The goods on which Applicant asserts a bona fide intent-to-use the +RED SUN REPAIR ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 121

The goods on which Applicant asserts a bona fide intent-to-use the +RED RESCUE ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 122

The goods on which Applicant asserts a bona fide intent-to-use the +RED POWER ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's RED Mark.

REQUEST FOR ADMISSION NO. 123

The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 124

The goods on which Applicant asserts a bona fide intent-to-use the +RED DREAM ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 125

The goods on which Applicant asserts a bona fide intent-to-use the +RED SUN REPAIR ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 126

The goods on which Applicant asserts a bona fide intent-to-use the +RED RESCUE ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 127

The goods on which Applicant asserts a bona fide intent-to-use the +RED POWER ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's RED BULL Marks.

REQUEST FOR ADMISSION NO. 128

The goods on which Applicant asserts a bona fide intent-to-use the +RED DETOX ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 129

The goods on which Applicant asserts a bona fide intent-to-use the +RED DREAM ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 130

The goods on which Applicant asserts a bona fide intent-to-use the +RED SUN REPAIR ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 131

The goods on which Applicant asserts a bona fide intent-to-use the +RED RESCUE ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 132

The goods on which Applicant asserts a bona fide intent-to-use the +RED POWER ELIXIR Mark are intended to be directed at the same trade channels as Opposer's goods Opposer's Common Law RED and RED BULL Marks.

REQUEST FOR ADMISSION NO. 133

Simultaneous use of Applicant's +RED DETOX ELIXIR Mark and Opposer's RED Mark is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 134

Simultaneous use of Applicant's +RED DREAM ELIXIR Mark and Opposer's RED Mark is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 135

Simultaneous use of Applicant's +RED SUN REPAIR ELIXIR Mark and Opposer's RED Mark is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 136

Simultaneous use of Applicant's +RED RESCUE ELIXIR Mark and Opposer's RED Mark is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 137

Simultaneous use of Applicant's +RED POWER ELIXIR Mark and Opposer's RED Mark is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 138

Simultaneous use of Applicant's +RED DETOX ELIXIR Mark and Opposer's RED BULL Marks is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 139

Simultaneous use of Applicant's +RED DREAM ELIXIR Mark and Opposer's RED BULL Marks is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 140

Simultaneous use of Applicant's +RED SUN REPAIR ELIXIR Mark and Opposer's RED BULL Marks is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 141

Simultaneous use of Applicant's +RED RESCUE ELIXIR Mark and Opposer's RED BULL Marks is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 142

Simultaneous use of Applicant's +RED POWER ELIXIR Mark and Opposer's RED BULL Marks is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 143

Simultaneous use of Applicant's +RED DETOX ELIXIR Mark and Opposer's Common Law RED and RED BULL Marks is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 144

Simultaneous use of Applicant's +RED DREAM ELIXIR Mark and Opposer's Common Law RED and RED BULL Marks is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 145

Simultaneous use of Applicant's +RED SUN REPAIR ELIXIR Mark and Opposer's Common Law RED and RED BULL Marks is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 146

Simultaneous use of Applicant's +RED RESCUE ELIXIR Mark and Opposer's Common Law RED and RED BULL Marks is likely to cause confusion, mistake, and/or

deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 147

Simultaneous use of Applicant's +RED POWER ELIXIR Mark and Opposer's Common Law RED and RED BULL Marks is likely to cause confusion, mistake, and/or deception among customers, users, and/or the public as to the source of each mark's respective goods.

REQUEST FOR ADMISSION NO. 148

On September 12, 2011, Applicant obtained International Registration No. 1096179 for the mark +RED as depicted below (the "+RED International Mark").



Applicant's +RED International Mark

REQUEST FOR ADMISSION NO. 149

The +RED International Mark is identical to the dominant portion of Applicant's Marks, and only differs by omitting the smaller font wording under "+RED".

REQUEST FOR ADMISSION NO. 150

Applicant extended IR No. 1096179 to Australia, Switzerland, China, the European Union, Japan, South Korea, Norway, Russia, and Singapore.

REQUEST FOR ADMISSION NO. 151

Applicant's +RED International Mark has been refused and abandoned in each and every jurisdiction to which IR No. 1096179 has been extended.

REQUEST FOR ADMISSION NO. 152

In Australia and Norway, Applicant's +RED International Mark was refused on absolute ground of likelihood of confusion with the official emblem of the Red Cross.

REQUEST FOR ADMISSION NO. 153

In Switzerland, Norway, and Singapore, Applicant's +RED International Mark was refused on the grounds of being likely to be confused with the official flag of Switzerland flag.

REQUEST FOR ADMISSION NO. 154

In Australia, China, Japan, South Korea, Russia, and Singapore, Applicant's +RED International Mark was refused on the grounds of likelihood of confusion with prior registered trademarks.

REQUEST FOR ADMISSION NO. 155

As Applicant has been unsuccessful in registering its +RED International Mark in any jurisdiction, for a variety of different reasons, Applicant is redesigning the +RED International Mark, which is the dominant visual portion of Applicant's Marks.

REQUEST FOR ADMISSION NO. 156

In light of Applicant's intended redesign of the dominant visual portion of Applicant's Marks, Applicant no longer has a bona fide intent to use the +RED DETOX ELIXIR Mark as shown in Application No. 85/400,933.

REQUEST FOR ADMISSION NO. 157

In light of Applicant's intended redesign of the dominant visual portion of Applicant's Marks, Applicant no longer has a bona fide intent to use the +RED DREAM ELIXIR Mark as shown in Application No. 85/400,933.

REQUEST FOR ADMISSION NO. 158

In light of Applicant's intended redesign of the dominant visual portion of Applicant's Marks, Applicant no longer has a bona fide intent to use the +RED SUN REPAIR ELIXIR Mark as shown in Application No. 85/400,933.

REQUEST FOR ADMISSION NO. 159

In light of Applicant's intended redesign of the dominant visual portion of Applicant's Marks, Applicant no longer has a bona fide intent to use the +RED RESCUE ELIXIR Mark as shown in Application No. 85/400,933.

REQUEST FOR ADMISSION NO. 160

In light of Applicant's intended redesign of the dominant visual portion of Applicant's Marks, Applicant no longer has a bona fide intent to use the +RED POWER ELIXIR Mark as shown in Application No. 85/400,933.

Respectfully submitted,

RED BULL GMBH
By: /Leah Z. Halpert/
Leah Z. Halpert
Martin R. Greenstein
Angelique M. Riordan
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5273
Tel: 408- 266-4700 Fax: 408-850-1955
E-Mail: LZH@TechMark.com
Attorneys for Opposer

Dated: April 10, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT** is being served on April 10, 2015, by first class mail, postage prepaid on Applicant's Correspondent of Record at the Correspondent's address of record below, with a courtesy copy via email to ccook@anvil-law.com:

Casimir W. Cook
Anvil Law PLC
2723 South State Street, Suite 150
Ann Arbor, MI 48104

/Leah Z. Halpert/
Leah Z. Halpert

Exhibit B

From: Cass Cook <ccook@anvil-law.com>
Sent: Tuesday, June 2, 2015 11:41 AM
To: Leah Halpert
Cc: Martin R. Greenstein; Angel Riordan; Derek Palmer
Subject: Re: Our ref: WS 6.010.903 - Red Bull GmbH v. Michael F. Ball - Consolidated Oppo No. 91-208,003

Leah,

We will be abandoning the applications and withdrawing the counterclaim.

Please expect to see the filing today or tomorrow.

Best regards,

Cass

On May 27, 2015, at 5:31 PM, Leah Halpert <LZH@TechMark.com> wrote:

Dear Cass,

As a follow up to my below email and the voice mail I left for you on May 22, 2015, we still have yet to receive any discovery responses from your client in the subject matter. As you know, the requests for admission now stand admitted by order of law, however, we would still like to schedule a meet & confer on the remaining discovery requests (the requests for production). Please let us know when would be most convenient for you to hold the meet and confer.

Best regards,
Leah

Leah Z. Halpert | Associate
TechMark a Law Corporation
Trademark & Intellectual Property Law
4820 Harwood Road | 2nd Floor | San Jose, CA 95124-5273
Tel: 408-266-4700; Fax: 408-850-1955
E-Mail: LZH@TechMark.com

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From: Leah Halpert [<mailto:LZH@TechMark.com>]
Sent: Thursday, May 21, 2015 4:50 PM
To: Casimir W. Cook (ccook@anvil-law.com)
Cc: Martin R. Greenstein; Angel Riordan; Derek Palmer
Subject: Our ref: WS 6.010.903 - Red Bull GmbH v. Michael F. Ball - Consolidated Oppo No. 91-208,003

Dear Cass,

As you are aware, your client's discovery responses were due May 15, 2015, yet to date, we have not received anything. Have they been sent? Please let us know when we can expect to receive the responses.

Best regards,
Leah

Leah Z. Halpert | Associate
TechMark a Law Corporation
Trademark & Intellectual Property Law
4820 Harwood Road | 2nd Floor | San Jose, CA 95124-5273
Tel: 408-266-4700; Fax: 408-850-1955
E-Mail: LZH@TechMark.com

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No virus found in this message.

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Version: 2015.0.5961 / Virus Database: 4355/9926 - Release Date: 06/02/15